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HEADLINE: New sentencing hearing ordered for man who killed 7-year-old in 1987

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The Cincinnati Enquirer

A federal appeals court Wednesday overturned the death sentence of a Cincinnati man who threw a 7-year-old girl from a fourth-floor window after attempting to rape her.

The U.S. 6th Circuit Court of Appeals ruled that Tony M. Powell did not get a fair hearing in 1987 because he did not receive an adequate psychological evaluation before he was sentenced to death.

The judges also found that Powell's court-appointed lawyers did a poor job preparing for the sentencing hearing.

Powell was convicted of killing Trina Dukes during an attempted rape in Over-the-Rhine. When neighbors tried to come to her aid, Powell threw the girl out a window and ran away.

The appeals court upheld Powell's murder conviction but ordered a new sentencing hearing within 180 days.

He still could be sentenced to death, but prosecutors are unsure how the hearing will be carried out in light of a recent U.S. Supreme Court ruling that defendants cannot be sentenced to death if they are found to be mentally retarded.

"We'll have to assess our options," said Hamilton County Prosecutor Mike Allen. He said the Supreme Court ruling "could complicate matters," especially since it may be difficult to determine Powell's mental capacity 16 years ago.

The appeals court said a new hearing is necessary because the psychiatrist who evaluated Powell, Dr. Nancy Schmidtgoessling, had said during the trial that she did not have sufficient time to properly evaluate Powell or to interview family members about his history of mental problems.

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